



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 9, 1996

Mr. Rex L. Cottle
President
Lamar University
P.O. Box 10001
Beaumont, Texas 77710

OR96-1413

Dear Mr. Cottle:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40739.

Lamar University (the "university") received three requests for information concerning an NCAA investigation conducted by an internal, advisory committee of the university. You claim that the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. You also assert that certain information is a "student record" and thus not subject to disclosure. You have submitted information, marked attachments A and B, for our review.

Attachment A includes a calendar of activities of the advisory committee. You have marked certain entries and assert that the information is excepted from disclosure under sections 552.107 and 552.111. Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). General factual information, such as a note that a meeting or phone conversation has taken place, is not normally excepted under section 552.107(1). *Id.*; Open Records Decision No. 589 (1991). We have marked certain information within the calendar entries that may be withheld because it reveals client confidences to an attorney or an attorney's legal advice.

You also assert that certain information in the calendar entries is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "only those internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking

processes of the governmental body at issue.” Open Records Decision No. 615 (1993) at 5. This exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency’s decision-making processes. *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref’d n.r.e.)). This section does not protect information regarding routine administrative and personnel matters, nor does it protect facts or written observations of facts. Open Records Decision No. 615 (1993) at 5; *see also* Open Records Decision No. 631 (1995) (section 552.111 excepts policymaking information of broad scope that affects governmental body’s policy mission). Some of the information that you claim is excepted under section 552.111 is factual information, which does not fall within the scope of this exception. We have marked the information that you may withhold under section 552.111.

Also included as part of attachment A are interview notes that were taken by the advisory committee. You have marked certain notations that you state were written by legal counsel and communicated to the advisory committee. You may withhold these notations under section 552.107(1) because they consist of and reveal legal advice and opinion. Additionally, however, you assert that the interview notes in their entirety are attorney-client communications. The interview notes consist of notes taken by members of the advisory committee during interviews with third parties, including students and coaches. Therefore, the information is not a confidential attorney-client communication excepted by section 552.107(1). Open Records Decision Nos. 574 (1990) (section 552.107 does not apply to communications with third parties).¹

It appears that certain information within the advisory committee’s calendar and notes may be protected, however, under the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g. You also assert that the information in attachment B is protected under FERPA. “Education records” must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision No. 332 (1982). “Education records” are records that (1) contain information directly related to a student, and (2) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987), 447 (1986). “Education records” also includes information obtained by an educational agency or institution from a former student that relates to the student’s attendance at the agency or institution. Open Records Decision No. 539 (1990).

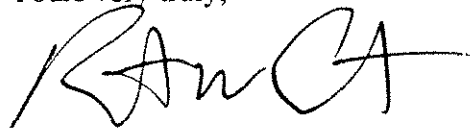
¹The university does not specifically indicate that the information at issue was provided to its legal counsel. Regardless, however, section 552.107 does not automatically exempt information simply because it was supplied to an attorney. Open Records Decision No. 574 (1990) at 4-5. Moreover, the request for information in this instance does not specifically seek information given by the committee to its legal counsel, but generally seeks all notes and other communications pertaining to the advisory committee. Thus, the fact that non-confidential information may have been provided to legal counsel does not automatically except the information from disclosure under section 552.107. *Id.*

Therefore, under FERPA the university must withhold only that information in attachments A and B which personally identifies a particular student. Because you have requested an opinion from this office regarding the applicability of FERPA, we have marked a sample of the type of information that must be withheld.² The remaining information that is not excepted from disclosure must be released.

Finally, we note that certain information that is contained within the advisory committee interview notes is confidential under common-law privacy and section 552.101 of the Government Code. Information must be withheld under section 552.101 in conjunction with the common-law right of privacy if: (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 539 (1990) at 5 (information regarding individual's emotional state excepted under common-law privacy). We have marked a sample of the submitted information to indicate the type of information that is confidential under common-law privacy and section 552.101 and that may not be released. We are also enclosing a list of other information that is confidential by law. This list is meant as a guide and is not exhaustive of the types of information that may be confidential by law. Before releasing the remaining interview notes, the university should review the information to determine if other information may also be protected.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', with a long horizontal stroke extending to the right.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

²This office has issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. We enclose a copy of Open Records Decision No. 634 (1995) for your information.

RWS/rho

Ref.: ID# 40739

Enclosures: Marked documents
Open Records Decision No. 634 (1995)
Confidentiality List

cc: Mr. Michael Wright
Sports Staff
Beaumont Enterprise
P.O. Box 3071
Beaumont, Texas 77704
(w/o marked documents)